

NOTE:

The allegations and decision in this case fall under old rules. It has been classified under the most relevant of the current code sections and subsections.

IOWA BOARD OF EDUCATIONAL EXAMINERS

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| IN THE MATTER OF: |) | BoEE Case No. 04-08 |
| |) | DIA No. 04 BEE 014 |
| |) | |
| JOSHUA STEELE, |) | License No. 330068 |
| |) | |
| Respondent. |) | Final Order |

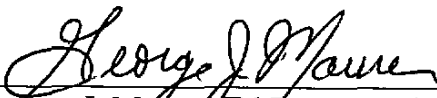
This matter came before the Board of Educational Examiners upon Complaint. An investigation was conducted and the Board found probable cause to move the case forward to hearing. The hearing was held before Administrative Law Judge Margaret LaMarche on August 23, 2005. On August 26, 2005, Judge LaMarche issued a proposed decision. The proposed decision was served upon the Respondent, the Complainant, and the Board.

The Board considered the proposed decision at its regular meeting on September 15, 2005. After examining the proposed decision, the Board unanimously approved a motion not to initiate review of the proposed decision. No appeal was received by the Board within the time allowed by rule.

Order

THEREFORE, pursuant to Iowa Code section 17A.15(3) (2005) and 282 IAC 11.27(2), the Proposed Decision represents the Final decision of the Board. As recommended therein: Teaching license number 330068 issued to Joshua Steele and all endorsements associated with the license are hereby **SUSPENDED for a minimum period of two (2) years from the date of this Order**. In order to be eligible for reinstatement of his license at the conclusion of the two-year minimum period of suspension, the Respondent must make application for reinstatement, pursuant to 282 IAC 11.34, and must provide the Board with evidence of rehabilitation to convince them that the reason for the suspension no longer exists, and it is in the public interest for his license to be reinstated.

Dated this 31 day of October, 2005.



George J. Maurel, Ed.D., Executive Director
On behalf of the Board

IOWA BOARD OF EDUCATIONAL EXAMINERS

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|-------------------|---|-----------------------------|
| IN THE MATTER OF: |) | BoEE Case No. 04-08 |
| |) | DIA No. 04 BEE 014 |
| |) | |
| JOSHUA STEELE, |) | License No. 330068 |
| |) | |
| Respondent. |) | Order re: Proposed Decision |

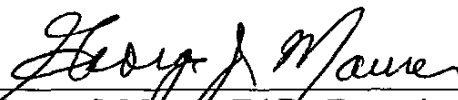
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The Board considered the proposed decision at its regular meeting on September 15, 2005. After examining the proposed decision, the Board unanimously approved a motion not to initiate review of the proposed decision.

Order

THEREFORE, the proposed decision in this matter will stand as the Board's final ruling in this matter unless a timely appeal from the proposed decision is initiated by one of the parties, pursuant to Board rule 282 I.A.C. 11.28(1).

Dated this 28 day of September 2005.



George J. Maurer, Ed.D., Executive Director
On behalf of the Board

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BOARD OF EDUCATION EXAMINERS

IOWA BOARD OF EDUCATIONAL EXAMINERS

AUG 29 2005

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| IN THE MATTER OF: |) DIA NO. 04BEE014 |
| |) CASE NO. 04-08 |
| JOSHUA STEELE, |) |
| |) License No. 330068 |
| Respondent. |) |
| |) PROPOSED DECISION [DEFAULT] |

On March 25, 2004, the Sigourney Community School District filed a Complaint against Joshua Steele (Respondent) with the Iowa Board of Educational Examiners (Board). The Complaint alleged that the Respondent downloaded over 1,000 pornographic files on his classroom computer, in violation of 282 IAC 12.2(1)(b). The Board subsequently found probable cause to hold a disciplinary hearing to determine whether the Respondent had violated 282 IAC 12.3(1)(c) and 13.5(2)(b).

On September 22, 2004, the Board extended the 180-day time limit for issuance of a final decision. A Hearing Notice was issued on October 13, 2004 and was served on the Respondent by restricted certified mail, return receipt requested, on October 15, 2004. The initial hearing date was continued to allow the parties an opportunity to pursue settlement. When the parties were unable to reach a settlement, a new hearing date was set. The Respondent was served with the continuance order by certified mail on or before June 24, 2005.

The hearing was held before the undersigned administrative law judge on August 23, 2005 at 9:00 a.m. in room 422, Lucas State Office Building, Des Moines, Iowa. Chris Scase, Assistant Attorney General, represented the state. The Respondent did not appear for the hearing. The hearing was recorded.

THE RECORD

The record includes the Complaint; the Order extending the 180 day time period, issued 9/22/04; the Hearing Notice, issued 10/13/04; Proof of Service; Motion to Continue Indefinitely Disciplinary Contested Case Hearing; Continuance Order; Motion to Schedule; Continuance Order and Proof of Service; the testimony of Dennis McMahon, Board Investigator, and David Harris, Superintendent; and State Exhibits A-C.

FINDINGS OF FACT

1. The Respondent holds a conditional two-year teaching license in the state of Iowa, which was issued on December 18, 2003 and will expire in 2006. The Respondent has endorsements to teach grades 7-12 physical science, biological science, and chemistry. (Testimony of Dennis McMahon; State Exhibit B)

2. The Respondent was employed by the Sigourney Community School District as a high school science teacher during the 2002-03 and 2003-04 school years. The school district also employed Kirk Magill as a part-time Information Technology (IT) consultant. In March 2004, the school district was experiencing problems with overloading on its computer network. Magill suspected the problem was caused by students downloading music from the internet. Magill warned teachers to stop downloading music and then began checking the school's computers to locate the source of the problem. (Testimony of David Harris; State Exhibit C)

3. The Respondent had a school issued computer in his classroom. The computer was for the Respondent's professional use but students could also have access to it. When Magill examined the Respondent's computer, he discovered a file folder containing downloaded music and over 1,000 pornographic images and videos. Magill viewed one video and a few photographs and identified the rest of the material as pornographic based on the files' titles. These titles were sexual in nature and included references to "teens" and "high school girls." The state submitted a partial listing of the downloaded pornographic files. (Testimony of David Harris; State Exhibit C)

4. On March 21, 2004, Superintendent David Harris and the high school principal met with the Respondent. The Respondent admitted downloading pornography from the internet to the computer in his classroom. The Respondent was asked for and provided an immediate resignation. The Respondent was also informed that the matter would be reported to the Board. (Testimony of David Harris; Exhibits A, C)

5. The Respondent told the Board's investigator that he only downloaded pornographic files during the summer months when he was at school working on lesson plans. This was refuted by the findings of the school district's IT consultant, who was able to determine that the majority of the files were downloaded on weekdays in February and March 2004, between the hours of 8:30 a.m. and 4:00 p.m. The Respondent also told the Board's

investigator that the materials were nude pictures of women and were downloaded from "registered" sites bearing a disclaimer that all of the materials depicted people eighteen years of age or older. (Testimony of Dennis McMahon; David Harris; State Exhibit C)

6. The school district has a written policy prohibiting personal use of the internet on the school's computers. This policy was communicated to the Respondent. The Respondent has admitted that he knew the school's policy on internet use. (Testimony of David Harris; Dennis McMahon; State Exhibit C)

CONCLUSIONS OF LAW

I. Failure To Appear

282 IAC 11.7(1)"b" provides that a notice of hearing may be served by certified mail with return receipt requested. The Respondent was properly served with the initial Hearing Notice by restricted certified mail on October 15, 2004. On or before June 24, 2005, the Respondent was properly served with the Continuance Order by certified mail. The Respondent failed to appear for the hearing.

282 IAC 11.23(1) provides that if a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

II. The Violations

The legislature created the Iowa Board of Educational Examiners with the exclusive authority to develop a code of professional rights and responsibilities, practice, and ethics. Iowa Code section 272.2(1)(2003). The Board has promulgated Criteria of Professional Practices at 282 IAC chapter 12 and Criteria of Competent Performance at 282 IAC chapter 13.¹

282 IAC 12.3(1) provides in relevant part:

282-12.3(272) Ethical practice toward other members of the profession, parents, students and the community.

¹ Effective September 8, 2004, these administrative code chapters were revised and renumbered at 282 IAC chapter 25.

12.3(1) *Principle I-commitment to the student.* The educator measures success by the progress of each student toward realization of potential as a worthy and effective citizen. The educator therefore works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals. In fulfilling obligations to the student, the educator:

...

c. Shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety.

282 IAC 13.5(2)(b) provides:

13.5(2) Each teacher shall:

...

b. Adhere to and enforce lawful policies of the school district which have been communicated to the teacher.

The preponderance of the evidence established that the Respondent violated 282 IAC 12.3(1)(c) and 13.5(2)(b) when he downloaded numerous pornographic files onto the school district's computer that was located in his classroom. This use of the school computer was blatantly inappropriate and violated school district policy that had been communicated to the Respondent. While there is no evidence that any student viewed the pornographic materials, it was unreasonable for the Respondent to download sexually oriented and pornographic material on his classroom computer where his students might become aware of his activities and might inadvertently or even purposefully view the pornographic images. Exposure to pornographic materials in the classroom could be psychologically harmful to students and could have an extremely negative impact on the students' learning environment.

III. Sanction

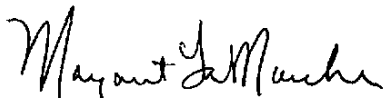
The nature of the downloaded materials raises serious questions about the Respondent's overall judgment and his ability to be a responsible member of the teaching profession. When he was questioned by the Board's investigator, the Respondent was unable to explain his behavior other than to state that he had a very "stupid moment." However, the record includes one file downloaded in October 2003 and additional files downloaded in February and March 2004. Clearly, the Respondent's inappropriate internet activity was not isolated.

The Respondent told the Board's investigator that he planned to see a psychologist. Since the Respondent failed to appear for the hearing, there is no additional information available concerning the motivation behind these violations or any efforts at rehabilitation. The circumstances of the violations certainly justify a lengthy suspension of the Respondent's teaching license, as recommended by the state, and also justify requiring the Respondent to bear the burden of establishing his fitness to return to the teaching profession.

DECISION AND ORDER

IT IS THEREFORE recommended that teaching license number 330068, issued to Joshua Steele, be SUSPENDED with no possibility for reinstatement for a minimum period of two (2) years from the date of the Board's final order. In order to be eligible for reinstatement of his license at the conclusion of the minimum period of suspension, the Respondent must provide the Board with sufficient evidence of rehabilitation to convince them that the reason for the suspension no longer exists, and it is in the public interest for his license to be reinstated. 282 IAC 11.34.

Dated this 26th day of August, 2005.



Margaret LaMarche
Administrative Law Judge
Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Lucas State Office Building-Third Floor
Des Moines, Iowa 50319

cc: Joshua Steele
619 South Main
Sigourney, IA 52591
(CERTIFIED)

Chris Scase
Assistant Attorney General
Iowa Department of Justice
Hoover State Office Building-2nd Fl.
(LOCAL)

Dr. George J. Maurer, Executive Director
Iowa Board of Educational Examiners
Grimes State Office Building-Third Floor
Des Moines, Iowa 50319

Appeal Rights

In accordance with 282 IAC 11.23(3), this default decision becomes final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties or an appeal of the decision on the merits is timely initiated within the time provided by rule 11.28(17A,272). A motion to vacate shall state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit or a person with personal knowledge of each such fact attached to the motion.

A proposed decision may be appealed to the Iowa Board of Educational Examiners (Board) by a party to the decision who is adversely affected. An appeal is initiated by serving a notice of appeal with the board within 60 days after issuance of the proposed decision. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify the parties initiating the appeal, the proposed decision or order appealed from, the specific findings or conclusions to which exception is taken and any other exceptions to the decision or order, the relief sought, and the grounds for relief. 282 IAC 11.28.